93-1324

Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1993

KENDALL STOCKSTILL,
Petitioner,

v.

SHELL OIL COMPANY,
Respondent.

Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Supreme Court change Louisiana law regarding the defense of qualified privilege in a defamation action?

PARTIES TO THE PROCEEDING

1. Kendall Stockstill (hereinafter referred to as "Stockstill"), Plaintiff in the District Court and Petitioner

2. Shell Oil Company[1] (hereinafter referred to as "Shell"), Defendant in the District Court and Respondent (hereinafter referred to as "Shell")

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[1] Shell Oil Company is wholly owned by Shell Petroleum Inc. Shell Petroleum Inc. is directly or indirectly owned 60% by Royal Dutch Petroleum Company and 40% by The "Shell" Transport and Trading Company, p.l.c., which are publicly traded companies. Shell Oil Company has no subsidiaries which are less than wholly owned.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This case involves a defamation claim filed by Kendall Stockstill against Shell Oil Company. The claim is based on statements made by a Shell employee to a supervisor at the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC") during the investigation of a charge of age discrimination.

The case was originally filed in the Civil District Court for the Parish of Orleans, State of Louisiana. It was removed to the United States District Court for the Eastern District of Louisiana on the basis of diversity of citizenship. The case was tried on April 13 and 14, 1992. At the conclusion of the Plaintiff's case, the District Court granted a judgment as a matter of law in accordance with Rule 50(a), Fed. R. Civ. Pro., in favor of Shell. On September 27,

1992 the United States Court of Appeals for the Fifth Circuit affirmed the Judgment.

In the Petition for Writ of Certiorari, Stockstill complains of the result caused by the application of Louisiana law to the facts of this case. Stockstill does not complain that the opinion of the Fifth Circuit violates the United States Constitution, a treaty, a federal statute, a federal ordinance, or any federal regulation. Stockstill does not complain that the opinion of the Fifth Circuit is in conflict with any opinion by any other federal court. Stockstill does not complain that the opinion of the Fifth Circuit is in conflict with any opinion of any state court of Louisiana. Stockstill does not even complain that the Fifth Circuit wrongly interpreted Louisiana law. Stockstill merely disagrees with the result caused by the application of Louisiana law to the facts of this case.

CITATION OF OPINIONS

The opinion of the United States Court of Appeals for the Fifth Circuit affirming the judgment entered in favor of Shell has been reported at 3 F.3d 868.

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction to consider the Petition for Writ of Certiorari under 28 U.S.C. § 1254(1).

APPLICABLE RULES

This case does not involve any constitutional provisions, treaties, federal statutes, federal ordinances, or federal regulations.

This case involves only the law of defamation in the state of Louisiana.

STATEMENT OF THE CASE

(i) Course of Proceedings and Disposition in Court Below

a. Introduction

Kendall Stockstill is a former employee of Coastline Construction, Inc. (hereinafter referred to as "Coastline"), an independent contractor which supplies welding services to Shell. In the fall of 1988 Shell informed Coastline that Stockstill would no longer be allowed on Shell facilities. Shell had reason to believe that Stockstill had engaged in inappropriate conduct of a sexual nature toward a female employee.

Stockstill filed a charge of age discrimination with the EEOC. In the course of the investigation of this charge a Shell employee told an investigator for the EEOC that Stockstill had engaged in inappropriate conduct of a sexual nature.

b. Proceedings Before the District Court

On June 24, 1991, Kendall Stockstill filed Case No. 91-11914 against Shell in the Civil District Court for the Parish of Orleans, State of Louisiana, alleging defamation. The claim was based on the statements made by the Shell employee to the EEOC investigator. This suit was removed to the United States District Court for the Eastern District of Louisiana and assigned Civil Action No. 91-2527. (R.vol.4 p.181).

On September 17, 1991, Shell filed a Motion for Summary Judgment arguing that statements made to the EEOC in response to a charge of discrimination were entitled to a qualified privilege. (R.vol.4 p.93). Therefore, Stockstill

must prove malice or lack of good faith in order to prevail. There was no evidence that the statements made to the EEOC were made with malice or in bad faith. The Motion for Summary Judgment was denied by a Minute Entry dated October 7, 1991. (R.vol. 4 p.43).

On March 19, 1992, Shell filed Motions to Amend its Answer and the Pretrial Order to assert the defense of absolute privilege. Shell also filed an Amended Motion for Summary Judgment arguing that statements made to the EEOC in response to a charge of discrimination are entitled to an absolute privilege. (R.vol.3 p.723). The motions were denied by a Minute Entry dated April 7, 1992. (R.vol.4 p.2).

The case proceeded to trial before a jury on April 13, 1992. On April 14, 1992, at the conclusion of Stockstill's case, the District Court granted a Motion for Judgment as a matter of law. (R.vol.6 p.163). The Court held that there was no evidence that the statements made to the EEOC were made with malice or in bad faith. A judgment in favor of Shell was entered on the same day. (R.vol.4 p.1).

On April 30, 1992, Stockstill filed a Notice of Appeal. (R.vol.3 p.590). On May 13, 1992, Shell filed a Notice of Cross Appeal. (R.vol.3 p.587).

c. Proceedings Before the Fifth Circuit

On June 8, 1993 the United States Court of Appeals for the Fifth Circuit heard oral arguments. On September 27, 1993 the Fifth Circuit issued an opinion affirming the judgment entered by the District Court. On October 28, 1993 the Fifth Circuit denied a Motion for Rehearing by Stockstill.

d. Proceedings Before the Supreme Court

On or about December 24, 1993 Stockstill filed a Petition for Writ of Certiorari.

(ii) Statement of Facts

Barbara Jean (B.J.) Holcombe is a former employee of Shell Offshore Inc., a subsidiary of Shell. During the summer of 1988 Holcombe filed a charge of sexual harassment and discrimination against Shell with the EEOC. (R.vol.5 p.95). Shell conducted an investigation of the charge.

As part of the investigation an employee by the name of Galen "Skipper" Berne was interviewed. (R.vol.5 p.46). Berne told Shell's investigators that he had seen touching and heard name calling between Holcombe and a contract welder, Kendall Stockstill. Berne had also heard rumors that Stockstill placed a dildo in Holcombe's lunch bag. (R.vol.5 p.111-116).

As a result of the discussion with Skipper Berne, Shell advised Coastline, Stockstill's employer, that Stockstill would not be allowed on Shell property. (R.vol.5 p.70-76).

Stockstill filed a charge of age discrimination against Shell with the EEOC. (R.vol.5 p.132). Ann Ford, a Shell employee, was responsible for coordinating responses to charges filed with the EEOC. (R.vol.5 p.10). Ford had several telephone conversations with Althea Bertrand, an investigator for the EEOC, regarding Stockstill's charge of age discrimination. (R.vol.5 p.11-16).

The EEOC wanted to know why Stockstill had been barred from Shell property. On June 21, 1990 Ann Ford explained that Shell was not accusing Stockstill of sexual harassment but that he had engaged in conduct that was inappropriate and violated Shell's policies. (R.vol.5 p.18). This statement was based on information contained in the

investigative file regarding the charge of sexual harassment and discrimination filed by B.J. Holcombe. (R.vol.5 p.20).

The EEOC pressed Ford for specifics. (R.vol.5 p.18-20). On June 25, 1990, Ford told Bertrand that Stockstill's conduct was "inappropriate" and "of a sexual nature." (R.vol.5 p.23).

There were no further conversations with any officials of the EEOC. (R.vol.5 p.23). The investigative file regarding the charge of sexual harassment and discrimination filed by B.J. Holcombe was treated as confidential. The investigation was not discussed with anyone outside of Shell other than the EEOC. (R.vol.5 p.23-24).

At trial B.J. Holcombe testified that Kendall Stockstill called her a "bitch" which she considered to be inappropriate language. (R.vol.5 p.89, 97). Stockstill admitted that he called Holcombe a "bitch" but would not agree that such conduct was inappropriate. (R.vol.5 p.138).

SUMMARY OF THE ARGUMENT

It would be inappropriate for the Supreme Court to change Louisiana law regarding the defense of qualified privilege in a defamation action. *Erie Railroad Company v. Thompkins*, 304 U.S. 64 (1938).

ARGUMENT

1. Should the Supreme Court change Louisiana law regarding the defense of qualified privilege in a defamation action?

The trial of this defamation case ended in a Judgment as a Matter of Law. The District Court held that the communication that formed the basis for the action was entitled to a qualified privilege under Louisiana law and Stockstill had presented no evidence of malice or bad faith that would defeat the privilege. The Fifth Circuit agreed and affirmed the judgment.

Stockstill has petitioned the Supreme Court for a Writ of Certiorari in order that the Court might "redefine" the defense of qualified privilege in a defamation action under Louisiana law. Stockstill does not complain that the opinion of the Fifth Circuit violates the United States Constitution, a treaty, a federal statute, a federal ordinance, or any federal regulation. Stockstill does not complain that the opinion of the Fifth Circuit is in conflict with any opinion by any other federal court. Stockstill does not complain that the opinion of the Fifth Circuit is in conflict with any opinion of any state court of Louisiana.

Stockstill does not even complain that the Fifth Circuit wrongly interpreted Louisiana law. Indeed, Stockstill correctly cites the elements of a qualified privilege as it is currently recognized in Louisiana.

Stockstill wants the Supreme Court to announce a new law of qualified privilege for the State of Louisiana. It would be inappropriate for the Supreme Court to do so.

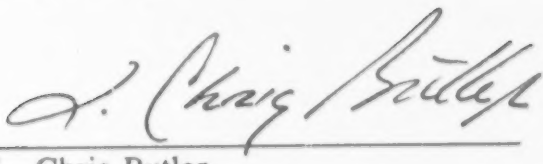
Jurisdiction of this case is based on diversity of citizenship. In diversity cases federal courts are bound by the decisions of the state courts on matters of state law. *Erie Railroad Company v. Thompkins, supra.* A federal court must take the law as it finds it. A federal court may not skirt the clear import of state decisional law solely because the result is harsh. *Parson v. United States*, 460 F.2d 228 (5th Cir. 1972).

Further, the Supreme Court has held that it should defer to the lower federal courts on questions regarding the interpretation of state law. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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